

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 26**

**ARB, INC.<sup>1</sup>**

**Employer**

**and**

**Case No. 26-RC-8250  
(formerly 24-RC-8167)<sup>2</sup>**

**UNION DE TRONQUISTAS DE  
PUERTO RICO, LOCAL 901**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:<sup>3</sup>

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated that ARB, Inc., hereinafter referred to as the Employer, is a Puerto Rico corporation with offices and places of business located in Catano and Guayama, Puerto Rico, where it is engaged in the business of commercial and

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The General Counsel issued an Order Transferring Case from Region 24 to Region 26. Pursuant to said Order, to the extent that further proceedings are appropriate to effectuate this Decision, this case will automatically transfer back to Region 24 and will continue as Case 24-RC-8167, except that Region 26 will retain jurisdiction only with respect to pre-election issues relating to the substance of this Decision.

<sup>3</sup> The Employer filed a timely brief, which has been duly considered.

domestic waste disposal. During the past 12 months, a representative period, the Employer had gross revenues in excess of \$500,000 and purchased goods and materials valued in excess of \$50,000 directly from suppliers located outside the Commonwealth of Puerto Rico. Accordingly, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner, who I find to be a labor organization within the meaning of Section 2(5) of the Act, claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks to represent “all service and maintenance employees employed by the Employer at its place of business in Catano, Puerto Rico, including truck drivers, mechanics and welders engaged in the commercial activities” of the Employer excluding those employees engaged in the “residential and/or domestic operations”.<sup>4</sup> The Employer asserts the only appropriate unit is all truck drivers, laborers, mechanics and welders employed by the Employer at its Catano and Guayama, Puerto Rico facilities. Thus, the issues are whether the employees at Catano, who are engaged in the residential trash disposal, and/or the employees at the Guayama facility should be included in the Unit.

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<sup>4</sup> This language is set forth in the Amended Petition which the Petitioner presented at the hearing.

The Employer's President and General Manager is Juan Reyes. Other officials of the Employer<sup>5</sup> are: Jorge Leon, Director of Human Resources; Claribel Torres, Human Resources Manager; Ruth Reyes Rivera, manager of Guayama facility; Angel Correa, supervisor of Bayamon operation; Anthony Perales, supervisor of Guayama facility; Rafael Reyes, mechanic supervisor; and Andres Reyes, mechanic supervisor. There are also supervisors, whose identities are unknown, over the Dorado residential operation, the "northern zone" commercial operation and the Catano, Bayamon and Dorado commercial operation.

The Employer's main office is in Catano, where human resources, payroll, sales and marketing, parts and supplies, and the truck shop are located. The Guayama facility is a satellite office that services the city of Guayama and commercial businesses in a large area covering Isabela, Yauco, Ponce, Juana Diaz, Santa Isabel and Maunabo. The record does not reflect that there are any other facilities. The parties stipulated that the distance between the Catano and Guayama facilities is 25 miles and it takes one to one and a half hours to travel by vehicle between the two facilities.

The Employer employs the following job classifications: truck drivers, laborers, mechanics and welders. The truck drivers and laborers are hourly paid employees. The mechanics are on a salary although the record evidence does not reflect the amount of the salary. The record evidence does not reflect how the welders are paid. In the past, about five or six employees have transferred from the Catano facility to the Guayama

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<sup>5</sup> The parties did not stipulate to any officials of the Employer being supervisors within the meaning of Section 2(11) of the Act. The record evidence demonstrates Leon and Torres exercise the authority to hire and fire employees; thus, I find them to be statutory supervisors. As for the remaining officials, the record evidence is incomplete to make findings on whether they are statutory supervisors.

facility while no employees have transferred from the Guayama facility to the Catano facility.

The same rules and regulations, as set forth in the employee manual, apply to all employees at the Catano and Guayama facilities. Employees at both facilities are eligible for the same health insurance and other fringe benefits, receive the same employee newsletter, wear the same uniform, receive the same Thanksgiving bonus -- a turkey gift certificate, and attend the Christmas lunch together. Leon and Torres of human resources in Canato decide hiring, evaluations and discipline of all employees, although the immediate supervisors of the operation or of each facility make recommendations. The drivers' starting wage rate is \$5.25 an hour. Seniority is companywide.

Although the Employer has three types of trucks, front loader, rear loader and roll-off, the Employer does not have separate job classifications for drivers of the different trucks. Instead, the Employer has only one truck driver job description, which covers all types of "heavy vehicles". The front loaders are used for commercial accounts plus public housing projects. The rear loaders are exclusively used for residential accounts while the roll-offs are used for both residential and commercial. The only differences between the three types of trucks are the manner in which the trash is picked and loaded into the truck and who operates the hydraulic system.<sup>6</sup>

The Employer has contracts with the cities of Bayamon, Dorado and Guayama. The contracts cover trash disposal for residential areas and commercial establishments.

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<sup>6</sup> On the rear loaders, the laborer operates the hydraulic system while on the front loaders, the driver operates the hydraulic system.

Employees at the Catano facility are regularly assigned to one of four operations, residential routes in the city of Bayamon, residential routes in the city of Dorado, commercial routes in Canato, Bayamon and Dorado and commercial routes in the “northern zone”. There are approximately 48 truck drivers assigned to the residential routes in Bayamon. Additionally, there are two laborers for each of the rear loaders and 1 laborer per front loader; thus, there are approximately 75 laborers<sup>7</sup>, who work the Bayamon residential routes. The truck drivers for the Bayamon routes use rear loaders most of the time and front loaders about once a week. About 50% of these truck drivers are qualified to drive both types of equipment. Angel Correa supervises the Bayamon residential operation. Correa reports to Juan Reyes, the general manager. The Bayamon employees report to the Catano facility at 3:30 a.m. The Bayamon residential routes cover residential areas, excluding public housing projects, which are considered commercial. The commercial drivers service the public housing projects.

Approximately 35 truck drivers and laborers report to the Catano facility at 3:00 a.m. to service the Catano, Bayamon and Dorado commercial routes. These are the only truck drivers and laborers, which the Petitioner is seeking. These truck drivers drive front loaders and roll-off trucks. They are also qualified to drive rear loaders and are assigned to the Bayamon or Dorado residential routes when the need arises, approximately once every two weeks. This operation has its own supervisor, identity unknown, who reports to the general manager.

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<sup>7</sup> The record did not provide an approximate number of laborers. The number, 75, was calculated by taking the number of trucks in use for the Bayamon operation and multiplying it by the average number of laborers per truck.

The contract with the city of Dorado is serviced from the Catano facility. There are 12 to 15 truck drivers and 25 laborers<sup>8</sup> assigned to be the Dorado residential routes. The employees report to the Catano facility at 6:00 a.m. These employees have their own supervisor, who reports to the general manager.

There are approximately 20 truck drivers and 20 laborers assigned to the “northern zone” commercial routes in the northern area of Puerto Rico. These employees report to the Canato facility at 4:00 a.m. and are assigned to their own supervisor.

At the truck shop in Catano, there are two mechanics, two electro-mechanics and three welders. These employees report to work at 7:00 a.m. and work and until 4:00 or 5:00 p.m. The Guayama truck shop does not have any mechanics or electro--mechanics. The Catano mechanics and electro-mechanics travel to the Guayama facility about once a week to perform repairs. If the repairs are complicated, then the truck is transported to the Catano facility for repair. The truck shop employees service all types of trucks and do not distinguish between trucks used for commercial routes and residential routes.

The Guayama facility employs approximately 23 truck drivers, 35 laborers<sup>9</sup> and one welder and has the following equipment: 12 rear loaders, four front loaders and three roll-off trucks. From the Guayama facility, the Employer services both commercial and residential routes and the employees can be assigned to either type of route, although the drivers assigned to front loaders are only assigned to commercial routes. The employees servicing the commercial routes from Guayama report at 4:00 a.m.

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<sup>8</sup> This number, an approximation, is based upon the number of truck drivers assigned to the Dorado operation.

while those servicing the residential routes report at 5:00 a.m. In addition to supervisor Anthony Perales, the Guayama facility has a manager, Ruth Reyes Rivera.

The first issue considered is whether the petitioned-for unit of truck drivers, laborers, mechanics and welders at the Catano facility, who are assigned to the commercial routes, is an appropriate unit. In determining an appropriate unit, the Board applies a community of interest analysis, wherein a number of factors are considered, including the similarity of duties, job qualifications, wages, benefits and working conditions, extent of interaction and interchange, organizational structure, functional integration of the business, history of collective bargaining and the scope of the petitioned-for unit. **Kalamazoo Paper Box Corp.**, 136 NLRB 134 (1962).

As the facts demonstrate, all of the truck drivers and laborers at the Catano facility perform similar duties. Specifically, the truck drivers drive the three types of trucks and the laborers load the trash into the trucks. The only distinction between truck drivers on commercial routes and truck drivers on residential routes is that commercial routes normally use front loaders while residential routes normally use rear loaders. From the truck drivers' perspective, this distinction is of little consequence, except that the drivers operate the hydraulic system on front loaders while the laborers operate the hydraulic system on rear loaders. There is not any difference in the job qualifications between truck drivers for commercial routes and truck drivers for residential routes. The Employer has only one truck driver job description, which covers all truck drivers.

As for the mechanics and welders, they work on all types of trucks, front loaders, rear loaders and roll-offs. Thus, there is no way to segregate the mechanics and welders insofar as commercial or residential routes are concerned.

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<sup>9</sup> This approximate number is based upon the number of truck drivers.

The wages, benefits and working conditions of all the employees who work at the Catano facility, truck drivers, laborers, mechanics and welders, are the same. The Employer does not differentiate between the pay rates of truck drivers, who normally drive commercial routes, and the pay rates of truck drivers, who normally drive residential routes. All of the Employer's employees receive the same benefits and are subject to the same working conditions.

As for the interchange and interaction between truck drivers, the record evidence demonstrates that on a frequent basis, approximately once a week, drivers normally assigned to commercial routes are assigned to residential routes. Additionally, residential route truck drivers are subject to be assigned to commercial routes although the record does not reflect the frequency of such an action. Since the Employer does not distinguish between truck drivers and laborers on the two types of routes, there are not any permanent transfers.

Although the commercial routes have separate supervision from the residential routes, each of these supervisors reports to the general manager, Juan Reyes. Furthermore, all final decisions relating to hiring and discipline are made by the human resources office, rather than by the supervisor of the particular operation. In this manner, all of the employees at the Catano facility appeared to be functionally integrated.

In similar factual situations, the Board has found the petitioned-for unit to be inappropriate. In **Carpenter Trucking**, 266 NLRB 907 (1983), the Board held the union's petitioned-for unit of dump truck drivers, excluding the tank truck drivers, was inappropriate inasmuch as the two types of truck drivers had comparable skills and job



functions, shared common supervision, and had permanent transfers between job classifications. The Board made this finding despite the fact that the tank truck drivers were paid differently by the trip instead of hourly, worked a different schedule -- at night, rather than during the day, and made 5 hour roundtrips instead of local deliveries.

Similarly, the Board in **Transerv Systems, Inc.**, 311 NLRB 766 (1993), found a petitioned-for unit of bicycle messengers was inappropriate because it failed to include driver/messengers. Specifically, both groups of employees worked at the same facility, had the same manager but separate immediate supervision, received the same benefits, earned similar wages, wore similar uniforms, had some permanent transfers between jobs and essentially performed the same job functions. Moreover, in **Phoenician**, 308 NLRB 826 (1992), the Board concluded the petitioned-for unit of golf course maintenance employees was inappropriate because it failed to include the landscape employees. The two groups of employees had separate immediate supervision but the same managerial supervisor, reported to the same location but their starting times were staggered by one-half hour "in order to avoid congestion in the maintenance yard", received similar wages, benefits and working conditions, performed similar work and were hired and fired through central administration. *Id.* at 826-27.

I find the petitioned-for bargaining unit is inappropriate because the truck drivers, laborers, mechanics and welders, who are engaged in work related to the commercial routes, do not have a separate community of interest from those truck drivers, laborers, mechanics and welders, who are engaged in work related to the residential routes. Rather, as demonstrated above, all of the truck drivers, laborers, mechanics and welders employed at the Canato facility share a community of interest because they

perform similar duties, have the same job qualifications, receive the same wages and benefits, work in the same working conditions, have interchange, and report to the same manager.

The remaining question is whether the employees at the Guayama facility should be included in the bargaining unit. In determining whether a single facility or two facilities are appropriate, the Board has long held a single facility is presumptively appropriate unless it has been so effectively merged or functionally integrated that it lost its separate identity. **D & L Transportation**, 324 NLRB 160 (1997); **Dixie Bell Mills**, 139 NLRB 629 (1962). To rebut this presumption, the Board reviews such factors as: centralized control of the daily operations and labor relations, extent of local autonomy to handle the facility's daily operations and supervision of the employees' daily work, extent of employee interchange, geographic proximity, similarity of skills, functions and working conditions and bargaining history, if any. See **D & L Transportation**, *supra*.

The Guayama facility has some factors which favor its inclusion in the Canato bargaining unit while other factors warrant a separate bargaining unit. Specifically, factors favoring inclusion are central control of administration of labor relations from the Canato facility, employees having the same skills and job functions, employees receiving the same wages and benefits and that there has been some interchange of employees between facilities. However, local autonomy and local day to day supervision of the Guayama facility by a supervisor and manager, as well as the geographic distance and driving time, are factors which support a finding of a separate bargaining unit.

In **Rental Uniform Service**, 330 NLRB No. 44 (1999), the Board found the employer failed to overcome the single facility presumption where the local manager had responsibility for the employees' day-to-day work and exercised the authority to evaluate and discipline employees although the general manager had final authority on such matters. Furthermore, the employer failed to show any significant employee interchange or interaction between the facilities. Moreover, in **Foodland of Ravenswood**, 323 NLRB 665 (1997), the Board held the employer also failed to overcome the single facility presumption where the facilities were approximately 25 miles apart and each facility had local autonomy over its operation. The Board noted the employees' skills, functions and working conditions were substantially uniform but such factors are accorded little weight when the employees are subject to direct supervision from a local manager with significant authority.

As previously stated, it is incumbent upon the Employer to rebut the single facility presumption. Based upon the record evidence and applicable caselaw as cited above, I find the Employer has failed to rebut the single facility presumption.

Accordingly, I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining unit within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time commercial and residential truck drivers, laborers, mechanics and welders employed by the Employer at its Canato, Puerto Rico facility.

Excluded: All other employees, including office clerical employees, guards and supervisors as defined in the Act.

The size of the unit found is approximately 250 employees. Since the unit found appropriate is significantly larger than the unit sought by the Petitioner, the Petitioner is granted 7 days to supplement its showing of interest herein or to withdraw the petition. Should the Union not wish to proceed to an election in the larger unit, it will be permitted, upon request, to withdraw its petition without prejudice.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Union de Tronquistas de Puerto Rico, Local 901.

## **ELECTION NOTICES**

Your attention is directed to Section 102.30 of the Board's Rules and Regulations, which provides that the Employer must the Board's official Notice of Election at least three (3) full working days before the day of the election, excluding Saturdays, Sundays, and holidays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

## **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 24 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, Hato Rey, Puerto Rico on or before April 27, 2001. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **2** copies, unless the list is

submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.). If you have any questions, please contact the Regional Office.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by May 4, 2001.

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Thomas H. Smith, Acting Director, Region 26  
National Labor Relations Board

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420-6280